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HILTON HOTELS CORPORATION and
HILTON SUPPLY MANAGEMENT, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

BERENICE BRACKETT,

Plaintiff,

VS.

HILTON HOTELS CORPORATION, a Delaware Corporation, HILTON SUPPLY MANAGEMENT, INC., a Delaware Corporation, KEVIN A. BARRY, an individual, KEVIN BARRY FINE ART ASSOCIATES, a California Corporation, JOHN or JAMES DOES 1-100, individuals of presently unknown identity, and ABC CORPORATION 1-300, corporations of presently unknown identity,,

Case No. CV-08 2100 WHA

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties

1 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
 2 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
 3 that must be followed and reflects the standards that will be applied when a party seeks permission
 4 from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Party: any party to this action, including all of its officers, directors, employees,
 7 consultants, retained experts, and outside counsel (and their support staff).

8 2.2 Disclosure or Discovery Material: all items or information, regardless of the
 9 medium or manner generated, stored, or maintained (including, among other things, testimony,
 10 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
 11 in this matter.

12 2.3 “Confidential” Information or Items: information (regardless of how generated,
 13 stored or maintained) or tangible things that qualify for protection under standards developed under
 14 F.R.Civ.P. 26(c).

15 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
 16 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would
 17 create a substantial risk of serious injury that could not be avoided by less restrictive means.

18 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 19 Producing Party.

20 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
 21 Material in this action.

22 2.7 Designating Party: a Party or non-party that designates information or items that
 23 it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
 24 Attorneys’ Eyes Only.”

25 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
 26 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

27 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
 28 retained to represent or advise a Party in this action.

1 2.10 House Counsel: attorneys who are employees of a Party.

2 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
3 their support staffs).

4 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent
5 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
6 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a
7 Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
8 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
9 connection with this litigation.

10 2.13 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
12 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected Material (as
15 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
16 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
17 counsel to or in court or in other settings that might reveal Protected Material.

18 4. DURATION

19 Even after the termination of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
21 otherwise directs.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or non-party that designates information or items for protection under this Order
25 must take care to limit any such designation to specific material that qualifies under the appropriate
26 standards. A Designating Party must take care to designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify – so that other portions of the
28 material, documents, items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
3 be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
4 encumber or retard the case development process, or to impose unnecessary expenses and burdens on
5 other parties), expose the Designating Party to sanctions.

6 If it comes to a Party's or a non-party's attention that information or items that it
7 designated for protection do not qualify for protection at all, or do not qualify for the level of
8 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
12 material that qualifies for protection under this Order must be clearly so designated before the material
13 is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of
16 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of
18 each page that contains protected material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
20 making appropriate markings in the margins) and must specify, for each portion, the level of
21 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY").

23 A Party or non-party that makes original documents or materials available for
24 inspection need not designate them for protection until after the inspecting Party has indicated which
25 material it would like copied and produced. During the inspection and before the designation, all of
26 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or portions thereof,

1 qualify for protection under this Order, then, before producing the specified documents, the Producing
 2 Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 3 ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected Material. If only a
 4 portion or portions of the material on a page qualifies for protection, the Producing Party also must
 5 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
 6 must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or
 7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 9 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close
 10 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
 11 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 12 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
 13 protection, and when it appears that substantial portions of the testimony may qualify for protection,
 14 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
 15 the deposition or proceeding is concluded) a right to have up to twenty (20) days to identify the
 16 specific portions of the testimony as to which protection is sought and to specify the level of
 17 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 18 EYES ONLY”).
 19 Only those portions of the testimony that are appropriately designated for protection within the twenty
 20 (20) days shall be covered by the provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound by the court
 22 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering or
 24 sponsoring the witness or presenting the testimony.

25 (c) for information produced in some form other than documentary, and for any
 26 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 27 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or

1 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 2 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
 3 Eyes Only.”

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 5 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
 6 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
 7 Order for such material. If material is appropriately designated as “CONFIDENTIAL” or “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the material was initially produced, the
 9 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that
 10 the material is treated in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 13 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 14 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
 15 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
 16 original designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
 18 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
 19 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
 20 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
 21 confidentiality designation was not proper and must give the Designating Party an opportunity to
 22 review the designated material, to reconsider the circumstances, and, if no change in designation is
 23 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
 24 stage of the challenge process only if it has engaged in this meet and confer process first.

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 26 confidentiality designation after considering the justification offered by the Designating Party may file
 27 and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
 28 applicable) that identifies the challenged material and sets forth in detail the basis for

1 the challenge. Each such motion must be accompanied by a competent declaration that affirms that
 2 the movant has complied with the meet and confer requirements imposed in the preceding paragraph
 3 and that sets forth with specificity the justification for the confidentiality designation that was given by
 4 the Designating Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the
 6 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
 7 material in question the level of protection to which it is entitled under the Producing Party's
 8 designation.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 11 disclosed or produced by another Party or by a non-party in connection with this case only for
 12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 13 disclosed only to the categories of persons and under the conditions described in this Order. When the
 14 litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below
 15 (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location
 17 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 20 disclose any information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 23 litigation;

24 (b) the officers, directors, and employees (including House Counsel) of the
 25 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
 26 the "Agreement to Be Bound by Protective Order" (Exhibit A);

27 (c) experts (as defined in this Order) of the Receiving Party to whom
 28 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be

1 Bound by Protective Order” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters, their staffs, and professional vendors to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
5 Protective Order” (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit
8 A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
9 must be separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this Stipulated Protective Order.

11 (g) the author or original recipient of the information.

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
14 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
17 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
18 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
19 hereto as Exhibit A;

20 (b) House Counsel of a Receiving Party (1) to whom disclosure is reasonably
21 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective
22 Order” (Exhibit A);

23 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
24 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective
25 Order” (Exhibit A);

26 (d) the Court and its personnel;

27 (e) court reporters, their staffs, and professional vendors to whom disclosure is
28

1 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
2 Protective Order” (Exhibit A); and

3 (f) the author or original recipient of the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION.

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that
7 would compel disclosure of any information or items designated in this action as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” the Receiving
9 Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event
10 more than three court days after receiving the subpoena or order. Such notification must include a
11 copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the
12 Party who caused the subpoena or order to issue in the other litigation that some or all the material
13 covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving
14 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
15 that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the
16 interested parties to the existence of this Protective Order and to afford the Designating Party in this
17 case an opportunity to try to protect its confidentiality interests in the court from which the subpoena
18 or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection
19 in that court of its confidential material – and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
21 court.

22 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
24 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
25 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
26 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person
27 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
28 such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached

1 hereto as Exhibit A.

2 10. FILING PROTECTED MATERIAL. Without written permission from the
3 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
4 may not file in the public record in this action any Protected Material. A Party that seeks to file under
5 seal any Protected Material must comply with Civil Local Rule 79-5.

6 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
7 Producing Party, within sixty days after the final termination of this action, each Receiving Party must
8 return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
9 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or
10 capturing any of the Protected Material. With permission in writing from the Designating Party, the
11 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the
12 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
13 the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
14 deadline that identifies (by category, where appropriate) all the Protected Material that was returned or
15 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.
17 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
18 papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials
19 contain Protected Material. Any such archival copies that contain or constitute Protected Material
20 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

21 12. MISCELLANEOUS

22 Right to Further Relief. Nothing in this Order abridges the right of any person to
23 seek its modification by the Court in the future.

24 Right to Assert Other Objections. By stipulating to the entry of this Protective
25 Order no Party waives any right it otherwise would have to object to disclosing or producing any
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
27 Party waives any right to object on any ground to use in evidence of any of the material covered by
28 this Protective Order.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 DATED: August 20, 2008

THE BERNSTEIN LAW GROUP, P.C.

4 By: /s/ Marc N. Bernstein

5 Marc N. Bernstein

6 Susan S. Boranian

Attorneys for Plaintiff

7 BERENICE BRACKETT

8 DATED: August 20, 2008

HOWREY LLP

9 By: /s/ Robert N. Phillips

10 Robert N. Phillips

Attorneys for Defendants

11 HILTON HOTELS CORPORATION and

12 HILTON SUPPLY MANAGEMENT

13 DATED: August 20, 2008

HANSON BRIDGETT LLP

14 By: /s/ Garner Weng

15 Garner Weng

Attorneys for Defendants

16 KEVIN A. BARRY and KEVIN BARRY

17 FINE ART ASSOCIATES

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19
20 Dated: _____, 2008

21 HON. WILLIAM H. ALSUP

United States District Court

ATTESTATION AS TO CONCURRENCE

I, Robert N. Phillips, under penalty of perjury of the laws of the United States of America, attest that concurrence in the filing of this document has been obtained from each of the other signatories to this document.

/s/ Robert N. Phillips

Robert N. Phillips

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [insert date] in the case of *Berenice Brackett v. Hilton Hotel Corp. et. al.*, Case No. 08-2100 WHA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]